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May 7, 2012

Thomas D. Shope
Regional Director OSM
Appalachian Regional Office
3 Parkway Center
Pittsburgh, Pennsylvania 15220

Dear Mr. Shope:

Please consider this correspondence to be our response and appeal to the notification that we received dated April 19, 2012, as to our concerns that the recent flooding events in Harless Creek community involving Apex Mine Permits 8980618 and 8980614 were caused by mining activities.

I notice in your correspondence there is reference to the fact that there was a "significant intense rain fall during the storm event." In fact the analysis of the rainfall indicated there was five inches of rain during the time frame. However, what has been ignored by all of those investigating these cases is that all of the residents report that most of the rainfall occurred after the damage was done. Indeed, the video evidence indicates that following the destruction of homes on Harless Creek- in which homes were exploded and floated away-there was a significant amount of rainfall that fell on the residents as they watched their homes float away. In other words, most of the property damage occurred prior to the five inches of rainfall that fell during the time frame. Indeed, the residents report standing on the hillsides during heavy rains, looking at the property damage that had already occurred.

The correspondence we received concluded that the mining violations did not contribute to the horrific flooding. Please be advised that we believe there is substantial evidence to suggest otherwise. It is important to point out that in the last two years there has been four major flooding events in Eastern Kentucky (Harless Creek, Pike County, Quick Sand Creek, Breathitt County, Middlesboro, Bell County, Kay Jay, Knox County). All of the communities that received flood damages were located directly below un-reclaimed surface mining operations. We do not think this is a coincidence. In all four matters, I have been the attorney of record and in all four incidences there appears to be a total lack of enforcement of the mining laws.

The most stunning incident occurred in the Harless Creek case. In that case, Mine Inspector Greg Stapleton indicated in his deposition testimony that the mining permit that Cambrian was operating on had actually expired for a year and half prior to the flood event. In the enclosed deposition of Inspector Stapleton you will notice that he acknowledges that perhaps

85 percent of the lands directly above the community which were flooding were un-reclaimed. Interestingly, this is in direct contrast to the engineer's report of Clyde DeRossett, who seemed to be under the misunderstanding that there was full reclamation and vegetation. The photos that were attached to the Jack Spadaro deposition in this matter reveal a vast waste land of un-reclaimed property. Inspector Stapleton's explanation as to why there was so much un-reclaimed land was to point out that there was still mining activities going on. Of course, there should not have been active mining occurring on that permit because Kentucky regulations mandate that once a permit expires the Kentucky Department for Natural Resources shall immediately issue an order of cessation. Here, they did not do this and the mining activities continued unabated. Following the flooding, citations were issued for failing to reclaim and mining without a permit.

We have served notice with the Kentucky Department for Natural Resources that we intend to file suit against Inspector Stapleton in Pike Circuit Court for his failure to enforce the mining laws. We don't think that the failure to enforce the mining laws is limited to Inspector Stapleton. Similar testimony was received from Inspector Gay in the Breathitt County action. In that action, during his deposition Inspector Gay refused to acknowledge that failing to reclaim large areas directly above communities does not pose a public safety threat to the community. We believe the shameful failure to enforce the mining laws has already caused massive destructions, several deaths, and will continue to go unabated as long as there is culture of not enforcing the mining reclamation laws.

Please advise if you need any further information as to this matter, and I will be happy to supplement it to you. Needless to say there is significant amounts of legal pleadings and deposition that have been taken, all of which I would be happy to forward to you.

I look forward to hearing from you as to this appeal.

Sincerely,

A handwritten signature in black ink, appearing to be 'NP' followed by a long, sweeping horizontal line that curves upwards at the end.

Ned Pillersdorf

NP/vjp

Enclosure

PIKE CIRCUIT COURT

DIVISION NO. I

CIVIL ACTION NO. 10-CI-01290

**BERTHA ADKINS, ET AL,
PLAINTIFFS**

VS

CAMBRIAN COAL CORPORATION, ET AL,)
DEFENDANTS)

VIDEO DEPOSITION OF
GREG STAPLETON, WITNESS

Pursuant to notice, the video deposition of the Witness, **GREG STAPLETON**, was taken before Rose M. Lovely, Notary Public, on February 1, 2012, at 10:00 a.m., at the office of Pillersdorf, DeRossett & Lane, 124 West Court Street, Prestonsburg, Kentucky.

Said Deposition taken for the purpose of discovery, and any and all purposes permitted by the Kentucky Rules of Civil Procedure.

APPEARANCES:

On behalf of the Plaintiffs:

Hon. Ned Pillersdorf
PILLERSDORF, DEROSSETT & LANE
124 West Court Street
Prestonsburg, Kentucky 41653

**On behalf of the Defendant,
Cambrian Coal Corporation:**

Hon. Susan L. Maines
CASEY, BAILEY & MAINES, PLLC
3151 Beaumont Centre Circle, Suite 200
Lexington, Kentucky 40513

**On behalf of the Department for Natural
Resources, Commonwealth of Kentucky:**

Hon. S. Bradford Smock
(Via Speakerphone)
2 Hudson Hollow Road
Frankfort, Kentucky 40601

Also present: Mr. Sam Billiter
Ms. Stephanie Tyree

INDEX:

	Pages
Caption.....	1 - 1
Appearances.....	2 - 2
Index.....	3 - 3
Opening statements.....	4 - 5
Witness:	
GREG STAPLETON	
Direct Examination.....	5 - 56
Cross Examination.....	57 - 83
Re-Direct Examination.....	83 - 95
Re-Cross Examination.....	95 - 98
Re-Direct Examination.....	98 - 101
Certification.....	102 - 102

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1 VIDEOGRAPHER: On the record. The time
2 is 10:02 a.m., the date is Wednesday, February the 1st,
3 2012. This is the deposition of Greg Stapleton. The
4 location is Pillersdorf, DeRossett & Lane Law Offices,
5 Prestonsburg, Kentucky. Commonwealth of Kentucky, Pike
6 Circuit Court, Division Number I, Civil Action Number 10-
7 CI-01290, Bertha Adkins, et al, Plaintiffs versus Cambrian
8 Coal Corporation, et al, Defendants. My name is William J.
9 Ward, I'm the videographer. The court reporter is Rose
10 Lovely. The attorneys will please introduce themselves,
11 who they represent, and the court reporter will swear the
12 witness.

13 Susan Maines for the Defendant, Cambrian
14 Coal Corporation. I'm Ned Pillersdorf. I'm the attorney
15 for the Plaintiffs.

16 COURT REPORTER: Raise your right
17 hand, please. Do you swear or affirm to tell the truth and
18 nothing but the truth so help you God?

19 WITNESS: I do.

20 COURT REPORTER: Thank you.

21 MR. PILLERSDORF: I guess we should
22 indicate Brad Smock is here by speakerphone. Is that
23 right, Brad?

24 MR. SMOCK: Yeah, I'm on the phone.
25 I represent the Department for Natural Resources,

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1 Commonwealth of Kentucky.

2
3 GREG STAPLETON,

4 having been first placed under oath, was examined and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MS. MAINES:

8 Q Would you mind to go ahead and state your
9 full name for the record, please?

10 A Robert Gregory Stapleton.

11 Q Okay. And, Mr. Stapleton, I understand
12 you are currently retired, is that right?

13 A Yes.

14 Q Okay. And what job are you retired from?

15 A Mine inspector with the Department.

16 Q Okay. And how long were on-- now when
17 you say with the Department, you're talking about the
18 Department that oversees all the coal mining companies in
19 Kentucky, correct?

20 A Yes.

21 Q All right. And how long were you a mine
22 inspector?

23 A Twenty-two years.

24 Q Twenty-two years. What does it mean to
25 be a mine inspector? What are your job responsibilities?

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5.

1 A We enforce the Kentucky statutes, you
2 answer citizen's complaints, enforce the law, make sure
3 that everything is reclaimed, they're mining as the permit
4 describes.

5 Q Okay. And were you in that position as a
6 mine inspector for twenty-two years?

7 A Yes.

8 Q Okay. As a mine inspector, were you
9 assigned to a particular area to oversee or a particular
10 number of mines to oversee?

11 A Yes.

12 Q Okay. Did that change somewhat over
13 those twenty-two years?

14 A Yes.

15 Q Okay. Considering that you have been or
16 were a mine inspector with the Cabinet enforcing Kentucky's
17 mining laws for twenty-two years, would it be fair to say
18 that you are familiar with Kentucky statutes and
19 regulations regarding surface coal mining?

20 A Yes.

21 Q Okay. And you'd have to be in order to
22 do your job, wouldn't you?

23 A Yes.

24 Q Okay. The mines that you were
25 responsible for, did you also have some familiarity with

1 the permit terms and conditions for those mines?

2 A Yes.

3 Q I assume you'd have to be, in order to do

4 your job as well?

5 A Correct.

6 Q Okay. There are several permits at issue

7 in this litigation. For Cambrian Coal, there are permits

8 898-0619, 898-0819, 898-0618. And for AEP Coal, forgive

9 me, it's 898-- well, let's start with-- with Cambrian for

10 the moment and I'll find the AEP numbers. Are you familiar

11 with those permits of Cambrian Coal?

12 A Yes.

13 Q Okay. Back in July of 2010 were you the

14 inspector assigned to be responsible for those permits?

15 A Yes.

16 Q Okay. How long were you assigned to

17 these particular permits?

18 A I really don't remember.

19 Q Okay. More than a couple of months?

20 A Yes.

21 Q Okay. More than a couple of years?

22 A Somewhere in that neighborhood.

23 Q Okay. Now these three permits are all

24 roughly contiguous to each other, correct?

25 A Correct.

1 Q Okay. And they are in and around Harless
2 Creek?
3 A Yes.
4 Q Okay. Are you familiar with where
5 Harless Creek is?
6 A Yes.
7 Q Okay. And this litigation that we're
8 here about today involves flooding on Harless Creek on July
9 17th, 2010. Are you familiar with that occurrence?
10 A Yes.
11 Q Okay. Now as a mine inspector, how often
12 would you inspect a given permit that you had
13 responsibility for?
14 A We were required, active permits, for--
15 to inspect them monthly.
16 Q Okay. And how often were you required to
17 make sure you inspected every increment within a given
18 permit?
19 A Could you say that again, please?
20 Q Yes, sir. When you would go out there
21 monthly to each mine, you wouldn't necessarily get around
22 to each and every increment of that mine, is that right?
23 A You're supposed to.
24 Q Supposed to?
25 A On a large job sometimes it's, it's very

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1 | hard to, to make the whole thing.

2 | Q Is there a requirement that you make sure
3 | you have inspected every increment on a given permit every
4 | so often?

5 | A Yes.

6 | Q And what is that?

7 | A Well, I mean it's-- I don't know exactly
8 | what you're asking.

9 | Q Okay. Are you familiar with Gene
10 | Blackburn?

11 | A Yes.

12 | Q Okay. He was your supervisor before you
13 | retired, is that right?

14 | A Correct.

15 | Q He testified that at least on a quarterly
16 | basis--

17 | A Yes.

18 | Q --you had to make sure you see every
19 | increment of every permit?

20 | A Correct.

21 | Q Okay. So you make an attempt to do that
22 | on a monthly basis?

23 | A Yes.

24 | Q Okay. Would you then have inspected
25 | these three Cambrian permits-- and instead of having to

1 state all three each time, can we just agree those are the
2 three I'm talking about?

3 A Yes, that would be fine.

4 Q Would you have inspected these Cambrian
5 permits then on a monthly basis during the time you were
6 the assigned inspector?

7 A Yes.

8 Q Okay. Now the Cambrian permits were all
9 on one side of the valley or hollow known as Harless Creek,
10 correct?

11 A Correct.

12 Q And there was a mining company on the
13 other side as well, is that right?

14 A Correct.

15 Q Okay. And that was AEP Kentucky Coal?

16 A Yes.

17 Q Okay. I show permit 898-0649, was that a
18 permit that you were responsible for as well?

19 A No.

20 Q It was not? Do you know who had the
21 responsibility for that permit?

22 A The best I remember, Eddie Kelly.

23 Q Okay. Is Mr. Kelly still with the
24 Department to your knowledge?

25 A No, I don't think so.

1 Q He retired as well?

2 A I believe so, yes.

3 Q Okay. Now what is the purpose of the
4 monthly inspections of the permits as a mine inspector?

5 A Well, to ensure that the mining is
6 progressing as, as outlined in the permit, to make sure
7 that the environment is being protected.

8 Q Okay. And the permits, before a permit
9 is issued it goes through a fairly rigorous application
10 process, is that fair?

11 A Yes.

12 Q Okay. So the terms of the permit or the
13 permit conditions have been approved by the state before a
14 mining company begins to mine?

15 A Correct.

16 Q Okay. And then your job is to ensure
17 that the mine conducts itself in accordance with the permit
18 conditions?

19 A Yes.

20 Q And with Kentucky laws?

21 A Right.

22 Q Okay. Now if on any given day you were
23 to inspect one of the mines you had responsibility for and
24 saw a violation either of the permit terms or Kentucky
25 regulations, what would you do?

1 A You write a Notice of Non-Compliance.

2 Q Okay. And what is a Notice of Non-
3 Compliance?

4 A Well, it's a-- it's a violation of the
5 law that you outline the conditions and give them remedial
6 measures for to-- to correct the situation.

7 Q Okay. You tell the mining company how
8 they need to fix the problem, correct?

9 A Not necessarily how to fix it, but it has
10 to be fixed.

11 Q But it has to be fixed? Okay. So not
12 necessarily the means they must go by to do it--

13 A Right.

14 Q --but what they need to take care of?

15 A Right.

16 Q Okay. So during your twenty-two years as
17 a mine inspector were you in the habit of ignoring or not
18 writing up violations that you saw when you inspected your
19 permits?

20 A No.

21 Q Okay. Probably wouldn't have kept your
22 job for twenty-two years if you had done that, would you?

23 A No.

24 Q All right. Now you also mentioned that
25 as a mine inspector you're responsible or have

1 responsibility for addressing citizen complaints, is that
2 right?

3 A Yes.

4 Q Okay. And as I understand citizen
5 complaints, if a citizen calls in or writes in or somehow
6 makes the complaint known, the Cabinet takes steps to
7 investigate that complaint?

8 A Correct.

9 Q Okay. And are those complaints assigned
10 to the inspector who is responsible for the mine in
11 question?

12 A Yes. I mean the majority of the time,
13 yes.

14 Q Okay. You're going to start the process
15 anyway?

16 A Yes.

17 Q Okay. If you need additional technical
18 assistance from other departments, you can ask for that?

19 A Correct.

20 Q Okay. If necessary, would that include
21 making an additional inspection upon a mine site, other
22 than your normal monthly inspection?

23 A Yes, it could.

24 Q Okay. The same question, if you went out
25 there on-- to a given mine based on a citizen's complaint

1 and found any violations of the permit terms or Kentucky
2 law, you'd issue a violation as well, would you not?

3 A Yes.

4 Q Okay. When citizens complaints are made,
5 did you provide any information back to the complainant
6 about your findings?

7 A Yes.

8 Q Okay. Whether they were-- whether they
9 were in their favor or not in their favor?

10 A Correct.

11 Q Okay. And you would advise the mining
12 company as well, isn't that right?

13 A Yes.

14 Q Okay. Regardless of what your
15 determination might be, whether you issue a violation or
16 notify the citizen you're not going to issue a violation,
17 either side has the ability, meaning the citizen or the
18 mining company, to seek administrative hearings regarding
19 your decision--

20 A Yes.

21 Q --is that right?

22 A Yes.

23 Q It's kind of the first step in the
24 process if somebody wants to pursue it further?

25 A Yes.

1 Q Okay. Now some Non-Compliances are
2 correctable and others are non-correctable. I know what
3 that means, but if you could just go ahead and explain
4 that. How you would explain that to a jury, the
5 difference?

6 A Some, some violations are correctable in
7 that they can be corrected and it does away with the
8 violation. Other violations are non-correctable due to
9 that things have been done that cannot be changed and,
10 therefore, it might require permitting action or some other
11 type of action like that, that it's not actually on ground
12 work.

13 Q Okay. Either way, whether a violation is
14 noted to be correctable or non-correctable, the mining
15 company is going to be instructed to take some kind of
16 action?

17 A Correct.

18 Q Okay. And generally on Non-Compliances,
19 there's a, there's a box for a description of the violation
20 and then there's a box where you indicate what remedial
21 measures are to be performed, correct?

22 A Correct.

23 Q And it's the inspector who decides what
24 remedial measures are to be performed, correct?

25 A Correct.

1 Q It's not the mining company?
2 A No.
3 Q Okay. If the mining company doesn't like
4 what you said, they can contest that, I guess?
5 A Correct.
6 Q Okay. And the same thing, if a citizen
7 doesn't like what you might have said, they can contest
8 that as well?
9 A Correct.
10 Q Okay. When you're investigating a
11 citizen's complaint as a mine inspector, are you supposed
12 to be biased one way or the other, toward the citizen or
13 the mining company, or are you supposed to make your own
14 independent determination?
15 A Make your own independent determination.
16 Q And is that what you always tried to do
17 in your twenty-two years?
18 A Yes, it is.
19 Q I want to talk real briefly about certain
20 types of violations. Are you familiar with the water
21 replacement requirement in the Kentucky regulations?
22 A I really don't remember a whole lot about
23 it, no.
24 Q Okay. Are you familiar with the concept
25 that there is a provision for that?

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25 that there is a provision for that?

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1 A Yes.

2 Q Okay. You might have to look up the
3 nitty gritty details of it?

4 A Correct.

5 Q Okay. Would you agree that if an
6 inspector or the Department finds that a natural water
7 supply has been contaminated, diminished, or interrupted,
8 water replacement can be ordered?

9 A Yes.

10 Q Okay. And there is a difference between
11 a temporary contamination, diminished. and a permanent one,
12 isn't that right?

13 A Yes.

14 Q Okay. And requirements are different
15 depending on whether it's a temporary or permanent
16 condition?

17 A Correct.

18 Q Okay. If it's a temporary impact to the
19 water supply, the mining company only has to provide a
20 temporary supply of water, isn't that right?

21 A In most cases, yes.

22 Q Okay. There's always exceptions to every
23 rule?

24 A Yes.

25 Q All right. And if it's a permanent

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1 adverse effect, then they're supposed to provide some kind
2 of permanent supply?

3 A Yes.

4 Q Okay. And there are time frames on how
5 long they have to provide a temporary supply and how long
6 they have to provide a permanent supply--

7 A Yes.

8 Q --is that right? In a case where someone
9 is-- a citizen has a concern or the Department has a
10 concern about the natural water supply, who makes the
11 decision if there is an adverse effect, the citizen, the
12 Cabinet, or the mining company?

13 A It would be the Cabinet.

14 Q Okay. And who makes the decision if that
15 effect is temporary or permanent?

16 A It would also be the Cabinet.

17 Q And again, if somebody doesn't agree with
18 you, they can move on--

19 A Yes.

20 Q --to some kind of administrative
21 proceeding? The nature of the replacement that is
22 required, be it providing filters, drilling a new well,
23 hooking up to city water, who makes that determination? Is
24 that also the Cabinet?

25 A Also the Cabinet, yes.

1 Q The regulations involving groundwater
2 talk a great deal about mineral content, do they not, iron,
3 sulfate--

4 A Yes.

5 Q --manganese, conductivity, pH, those
6 types of things?

7 A Correct.

8 Q Okay. And those are characteristics of
9 water that are regulated and are part of what the
10 enforcement laws and regulations want-- want you to keep
11 check on and make sure there's no adverse changes to those?

12 A Yes.

13 Q That's a really badly worded question,
14 but you understand what I'm asking? Okay. Is coliform
15 bacteria one of the parameters in water condition that the
16 Cabinet regulates? And if you don't know, that's fine.

17 A I really don't know.

18 Q Okay.

19 A I've forgot a lot of this.

20 Q The joy of being retired, right?

21 A Yes.

22 Q Okay. As part of the permitting process,
23 mining companies have to collect and provide some
24 background water quality data, isn't that right?

25 A Correct.

1 Q And during the mining process they are
2 monitoring laws to determine what the water quality is,
3 isn't that right?

4 A Yes.

5 Q Okay. Immediately after the flooding on
6 Harless Creek in July of 2010 while you were still an
7 inspector, are you aware of any complaints filed alleging
8 that the natural water supply had been damaged by the
9 mining?

10 A I really don't remember any.

11 Q Okay. When did you retire? What's the
12 date of your retirement?

13 A September 1.

14 Q 2010?

15 A 2010, I believe it is.

16 Q Okay. It was about six weeks after this
17 flooding event, isn't that right?

18 A Yes.

19 Q Okay. So if the flooding occurred in
20 2010, you retired in 2010?

21 A Yes.

22 Q Okay. We have in this case discussed
23 numerous Non-Compliances, both before, immediately after,
24 and well after the mining, some of which were issued by
25 you, some by other people. We haven't really discussed any

1 Non-Compliances though that were unabated at the time of
2 the flooding on Harless Creek. To your recollection, were
3 any unabated Non-Compliances on these Cambrian permits just
4 before the flooding?

5 A I really don't remember any, no.

6 Q Okay. I'd like to show you what was
7 attached to Mr. Blackburn's deposition as exhibit one, and
8 it's Non-Compliance 53-1161, based on an inspection of July
9 11, 2008 and I believe you were the inspector on this.
10 It's kind of hard to see, but is that you down there?

11 A Yes.

12 Q Okay. This is a violation that was
13 issued back in July of 2008 regarding a diversion ditch.
14 To your knowledge, was this Non-Compliance of approximately
15 two years before the flooding had been abated before July
16 17th, 2010?

17 A Yes, I think so.

18 Q Okay. Is there a date on that Non-
19 Compliance by which time remedial measures were to be
20 completed?

21 A 8/11/2008.

22 Q And this is a correctable violation,
23 correct?

24 A Yes.

25 Q I'll go on and show you this page. The

1 second page of exhibit one, down here at the bottom, this
2 is the assessment for a fine on this Non-Compliance under
3 the, let's see, I'm looking, good faith points that can be
4 awarded to a mine company when they're assessed a fine.

5 What does it indicate?

6 A It indicates that it was abated by the
7 initial deadline and there was five points given for that.

8 Q Okay. So if it was abated by the initial
9 deadline, it was abated by August 11th, 2008?

10 A Yes.

11 Q Okay. Would this Non-Compliance issued
12 back in July of 2008, which was abated in August of 2008,
13 have had anything to do with the events of July 17th, 2010?

14 A Not to my knowledge.

15 Q Do you even know if this property or SS-
16 27A was within the Harless Creek watershed?

17 A I really don't remember right now.

18 Q Fair enough. Now based on what we just
19 looked at as part of exhibit-- page two, exhibit one, to
20 Mr. Blackburn's deposition, was that a violation that
21 Cambrian acknowledged and took care of and paid?

22 A Yes.

23 Q Okay. Acknowledged it there and they
24 took care of it in the initial time frame?

25 A Yes.

1 Q Okay. And paid their fine?
2 A Correct.
3 Q Approximately how many permits would you
4 have been responsible for in July of 2010?
5 A In the thirties.
6 Q In the thirties?
7 A Yes.
8 Q Okay. Were some of them like Cambrian in
9 that they had multiple permits in one location?
10 A Yes.
11 Q Okay. Were they all within Pike County?
12 A Yes.
13 Q Okay. Now I believe you've already
14 indicated that you're familiar with the flooding on Harless
15 Creek of July 17th, 2010. Are you also familiar with the
16 storm event that occurred on the same date?
17 A Yes.
18 Q Okay. Did you live in Pike County at the
19 time--
20 A No.
21 Q --of this flooding? And where did you--
22 what county did you live in?
23 A Floyd.
24 Q In Floyd? Okay. Do you have any family
25 that lived in Pike County?

1 A No.

2 Q Okay. Do you have a clear recollection
3 of the rain event and the flooding that took place in July
4 of 2010? I understand that you weren't actually probably
5 physically present for it, but the aftermath of it?

6 A Yes.

7 Q And the fact that it happened?

8 A Yes.

9 Q Would you agree that in certain areas of
10 Pike County there was a substantial storm event on July
11 17th, 2010?

12 A Yes, I would.

13 Q Okay. If I told you July 17th, 2010 was
14 a Saturday, would you agree with that?

15 A Yes.

16 Q Okay. Beginning Monday, July 19th, 2010
17 did you, in your role as a mine inspector, have a lot of
18 work to do because of the flood event?

19 A Yes, I did.

20 Q Okay. What action did you take following
21 this storm event?

22 A We, we started checking areas where we
23 had complaints. We went to the mine sites.

24 Q Did you check all your permits after this
25 rain event?

1 A No.

2 Q Okay. Just ones in certain areas?

3 A Just ones in certain areas at this time,

4 yes.

5 Q Okay. The ones that had the most rain?

6 A The ones that had the most rain.

7 Q Okay. Were you looking just because of

8 complaints or also to see how some of those mine sites

9 stood up to this storm event?

10 A Both, yes.

11 Q Both? Would that be typical in an event

12 where there was an unusually heavy storm event, that you

13 would want to go check on the permits in that area?

14 A Yes.

15 Q Okay. And what is the purpose of

16 checking on those permits that were in an area where there

17 was a large storm event?

18 A Well, to ensure that the permit had

19 withstood the rain and had not caused any potential hazards

20 to areas below the permit.

21 Q Okay. Under the mining regulations is

22 there a particular type of storm event that a surface mine

23 is supposed to be designed to withstand?

24 A Yes. There's different parameters for

25 different, different areas of the mine, such as sediment

1 ponds and so forth.

2 Q Okay. What is the maximum storm event
3 they're designed to withstand?

4 A A hundred year, I believe on some areas.

5 Q Okay. And what are sediment ponds to be
6 designed for?

7 A I really don't remember.

8 Q Okay. But a hundred years is the outside
9 we're looking at?

10 A That's-- as far as I know, that's the
11 biggest storm event I can remember.

12 Q Okay. All right. And that hundred year
13 storm event is based on a twenty-four hour length storm,
14 correct?

15 A Yes.

16 Q Okay. Do you recall in Pike County
17 roughly what a hundred year, twenty-four hour storm, how
18 many inches of rain that would be on average?

19 A No, I don't.

20 Q Okay. To your recollection, based on
21 what you saw after the fact and what information you were
22 provided by, whether it be citizens or mining companies
23 within those permits that you were responsible for, was
24 this a significant rain event?

25 A Yes, it was.

1 Q Okay. Greater than the ordinary rain
2 event?
3 A Yes.
4 Q Was it, to your understanding, greater
5 than a hundred year storm event?
6 A I really don't remember.
7 Q Okay. Okay. The plaintiffs in this case
8 have recently disclosed a mining engineer by the name of
9 Scott Simonton. Are you familiar with--
10 A No.
11 Q --Scott Simonton at all?
12 A No.
13 Q Okay. He issued a report that talked
14 about four Non-Compliances for Cambrian, and I want to talk
15 a little bit more about those four Non-Compliances that
16 were an issue for him.
17 MR. SMOCK: Susan, what was the
18 engineer's last name?
19 MS. MAINES: Simonton.
20 MR. SMOCK: Can you spell that?
21 MS. MAINES: S-i-m-o-n-t-o-n,
22 Scott.
23 MR. SMOCK: Okay.
24 Q What I want to ask you about is Non-
25 Compliance 53-1828, which was attached as exhibit six to

1 Gene Blackburn's deposition, and it regards an inspection
2 dated 9/13/2010. Now on 9/13/2010 you would have been
3 retired, correct?

4 A Yes.

5 Q Okay. I guess my question would be-- and
6 I'll go ahead and read the violation to you. "Material
7 originating from the spillway of sediment structure thirty-
8 five has been deposited beyond a permitted and bonded
9 area." After the flooding and prior to your retirement,
10 had you conducted a thorough inspection of the Cambrian
11 permit?

12 A Yes.

13 Q Okay. And if you had noted material
14 originating from the spillway of sediment thirty-five that
15 was deposited beyond the permitted and bonded area, would
16 you have written a violation for that?

17 A During that time frame we did several
18 inspections and there were areas that were going to require
19 Non-Compliances. Some of those we waited to combine and do
20 a final investigation on.

21 Q Okay.

22 A It's possible. This, this sediment pond,
23 I do remember that sediment pond and the material from the
24 spillway had been-- been washed out of that spillway.

25 Q Washed out? So did it go off permit?

1 A To the best of my knowledge, I think it
2 did, yes.

3 Q And what watershed was this in?

4 A It would have been in Harless Creek.

5 Q Okay. Did, did the material that had
6 washed off from it go down to, into main Harless Creek,
7 into the head of Harless Creek?

8 A I really don't remember that.

9 Q Okay. The material coming from-- would
10 that have been something that occurred as a result of the
11 heavy rainfall and water--

12 A Yes.

13 Q --flowing through the sediment structure?

14 A Yes.

15 Q Okay. That's not a condition that, to
16 the best of your knowledge, existed prior to the rain,
17 storm event of July 17th, 2010?

18 A No, it did not.

19 Q Okay. All right. Violation, or Non-
20 Compliance 53-1556 on permit 898-0619. This Non-Compliance
21 and I'll go ahead, and read you the description before I
22 hand it to you. "The sediment level and sediment structure
23 SS-39 has exceeded the approved elevation as set forth in
24 the permit plan below hollow fill number nine on increment
25 twenty-two. The inspection was conducted on July 29, 2010.

1 Now Mr. Blackburn is the individual that signed this. But
2 do you recall yourself inspecting that particular sediment
3 structure and having knowledge of this Non-Compliance?
4 A Yes.
5 Q Okay. Did you personally witness the
6 condition of SS-39 after the rain event?
7 A Yes.
8 Q Okay. Did SS-39, to your recollection,
9 breach?
10 A No.
11 Q Did SS-39 overtop?
12 A No.
13 Q Was the berm at the front of SS-39 intact
14 after the rain event?
15 A Yes.
16 Q Okay. If you could please, just so
17 there's no misunderstanding about what I or you are
18 referring to, what's the purpose and function of a sediment
19 structure such as SS-39?
20 A It's to catch the, the drainage from a
21 given area and allow the sediment to settle before it
22 enters the waters of the Commonwealth.
23 Q Okay. So it's not intended to prevent
24 water from passing through?
25 A No.

1 Q It's intended to prevent sediment from
2 passing through?

3 A Sediment.

4 Q Okay. This Non-Compliance obviously
5 indicates that after this storm event on July 17th, 2010,
6 SS-39 had exceeded its approved capacity level and needed
7 to be cleaned out, correct?

8 A Correct.

9 Q Based upon your knowledge and inspection
10 of this permit, was that sediment structure 39 in that
11 condition prior to the flooding of July 17th of 2010?

12 A No, it was not.

13 Q Okay. Would it have filled with sediment
14 during the storm event?

15 A Yes.

16 Q Is that what those sediment structures
17 are designed to do?

18 A Yes, they are.

19 Q Okay. Do you have an opinion as to
20 whether or not SS-39 operated as designed or not in the
21 storm event of July 17, 2010?

22 A Yes, I believe it did.

23 Q Okay. And I may have asked you this and
24 if I did I apologize. These sediment structures, are they
25 to withstand a twenty-five year storm event or a hundred

1 year?

2 A I really don't remember.

3 Q Okay, fair enough. I think I asked you

4 that.

5 A Yeah.

6 Q Were there any sediment structures that

7 you're aware of on these Cambrian permits within the

8 Harless Creek watershed that breached?

9 A No.

10 Q Okay. Were there any that did not appear

11 to function as they were or should have been designed for

12 this type of rain event?

13 A No. They all functioned just as they

14 were designed for.

15 Q Okay. In terms of the sediment

16 structures on the Cambrian permits within the Harless Creek

17 watershed, overall were you pleased, displeased, happy,

18 disgusted, what, with how those sediment structures

19 performed in this rain event?

20 A I thought they, they held up extremely

21 well for the amount of rain that they had.

22 Q Okay. To your knowledge was SS-39

23 constructed according to its permit?

24 A Yes.

25 Q When the permit application was

1 submitted, would SS-39 have been part of that permit
2 application?

3 A Yes.

4 Q And would the design and proposed
5 construction of SS-39 have been included in the permit
6 application?

7 A Yes.

8 Q Okay. As the permit was approved, the
9 proposed design and construction of SS-39 was obviously
10 approved by the state as well?

11 A Yes.

12 Q Okay. The specific locations of these
13 sediment structures, is that also included on the permit
14 where they're to be located?

15 A Yes.

16 Q Is that also part of what's approved as
17 part of the permit application process?

18 A Yes, it is.

19 Q Was SS-39 in its approved location?

20 A Yes.

21 Q This Non-Compliance, 53-1556, was it
22 issued to indicate that SS-39 had any causal relation to
23 what occurred on Harless Creek and caused the flooding?

24 A No, I don't think so.

25 Q Okay. I want to show you, and this goes

1 with Non-Compliance 53-1556 which is a mine inspection
2 report for the same permit and ask you what-- what these
3 mine-- what types of information these mine inspection
4 reports include?

5 A What type of information they include?

6 Q Yes, sir.

7 A Well, it includes--

8 Q Let me ask you this. Does it indicate
9 anywhere, how many acres are permitted on this permit?

10 A Yes.

11 Q Okay. And how many acres were approved
12 in permit 898-0619?

13 A Five hundred and sixty-seven point four
14 six.

15 Q Okay. Does it also indicate how many
16 acres are estimated to have been disturbed as of this date?

17 A Yes.

18 Q And how many acres is that?

19 A Three hundred and twenty-five.

20 Q Okay. Does it also estimate how many
21 acres have been reclaimed as of the date of the inspection
22 report?

23 A Yeah.

24 Q And how many acres is that?

25 A A hundred.

1 Q Okay. Would you agree that permit 898-
2 0619 is partially in Harless Creek's watershed, but
3 partially in other watersheds as well?

4 A Yes, it is.

5 Q Okay. And this inspection report, while
6 it tells us how many acres are on the permit and how many
7 acres have been disturbed, it doesn't tell you how many
8 acres are in each watershed, does it?

9 A No.

10 Q Okay. That would be the total permit
11 acreage?

12 A Right.

13 Q Okay. And according to this inspection
14 report, approximately a hundred acres of permit 898-0619 of
15 the three hundred twenty-five that had been disturbed had
16 been reclaimed as of the date of this inspection, correct?

17 A Yes.

18 Q Are you familiar with a gentleman named
19 Jack Spadaro?

20 A Yes.

21 Q Okay. Mr. Spadaro has testified on
22 multiple occasions within his deposition that there was
23 zero reclamation done whatsoever on permit 898-0619 as of
24 July 17th, 2010. Would you agree or disagree with his
25 characterization?

1 A Disagree.

2 Q Okay. And you were on that permit on a
3 monthly basis?

4 A Yes.

5 Q So you would have personal knowledge of
6 what reclamation was occurring on that permit?

7 A Yes.

8 Q Okay. The next one I want to ask you
9 about is Non-Compliance 53-2478. This one is on permit
10 898-0819, and the description of violation-- well, it has
11 three parts to it. And part number one deals with
12 diversions SS-9A and 9B. Part two deals with SS-9 and
13 actually mentions the Powells Creek watershed. And part
14 three deals with increment three and the Powells Creek
15 watershed. Who was the inspector who issued these?

16 A Myself.

17 Q Yourself? Were all of these within-- all
18 three violations on this Non-Compliance within the Powells
19 Creek watershed?

20 A Yes, I believe they were.

21 Q Okay. And if they were in the Powells
22 Creek watershed, they wouldn't have anything to do with
23 flooding on the Harless Creek watershed, isn't that right?

24 A Correct.

25 Q Okay. If the three violations were in

1 Powells Creek, would you agree that Non-Compliance 53-2478
2 has no causal relation to what occurred on Harless Creek?

3 A Yes.

4 Q Okay. I'm going to show you Non-
5 Compliance 53-2425 on permit 898-0619 stemming from an
6 inspection on July 26th, 2007, which specifically refers to
7 sediment structure twenty-seven and the property of Michael
8 Thacker, who is not a plaintiff. Who is the inspector on
9 this Non-Compliance?

10 A It's myself again.

11 Q Okay. To your knowledge, did this
12 involve property within the Harless Creek watershed?

13 A I really don't remember.

14 Q Okay. Would SS-27 be marked on a permit
15 map?

16 A Yes, it would.

17 Q Okay. And you could tell from that what
18 watershed it would be in?

19 A Yes.

20 Q Okay. I think there's been other
21 testimony it was in Biggs Branch. Does that ring true to
22 you or not?

23 A It sounds correct, but I really don't
24 remember exactly where it was-- was.

25 Q If in fact this was in Biggs Branch,

1 would it have any relation to what occurred on Harless
2 Creek?

3 A No.

4 Q Okay. That leaves Non-Compliance 53-2479
5 on permit 898-0619 stemming from an inspection dated
6 8/3/2010. There are two portions to this Non-Compliance.
7 The first is "permittee has allowed the expiration of the
8 permit, and engaged in coal removal on a surface mining
9 operation." And part two is "permittee has failed to
10 achieve required reclamation within the specified time
11 frame of five hundred and forty days on increments that are
12 listed." Who was the inspector on this particular Non-
13 Compliance?

14 A I was.

15 Q Okay. I want to start with the first
16 violation there which is the expiration of the permit.
17 There's been suggestion or characterization that Cambrian
18 Coal operated without a permit. This Non-Compliance was
19 issued in regard to a specific permit number, correct?

20 A Yes.

21 Q That being 898-0619?

22 A Yes.

23 Q So Cambrian was issued that permit after
24 going through a permit application process and was given
25 permission to mine here?

1 A Correct.

2 Q Okay. The surface mining done by

3 Cambrian on 898-0619 was pursuant to a permit issued by the

4 state?

5 A Yes.

6 Q All right. At some point in time this

7 permit, for some reason, was not timely renewed. Is that a

8 fair characterization?

9 A Yes.

10 Q Okay. Do you have knowledge of what

11 happened with that or why it didn't renew when it should

12 have?

13 A I really don't remember.

14 Q Okay. To your knowledge, did Cambrian

15 apply for renewal and get turned down?

16 A I can't remember that either.

17 Q Okay. If a permit had applied for non--

18 I'm sorry, applied for renewal and been refused, is that

19 something as the inspector on that permit you would expect

20 to have known?

21 A Yes.

22 Q Okay. Do you recall ever learning that?

23 A No.

24 Q Okay. According to the Non-Compliance,

25 I'm not sure if it's on that page or this page, when did

1 the permit expire?

2 A 1/22/2009.

3 Q Okay. And between 1/22 of 2009 and July
4 17 of 2010, you would have inspected that mine, roughly, at
5 least eighteen times?

6 A Yes.

7 Q Okay. Was this Non-Compliance ever
8 issued at any other time between January of '09 and July of
9 2010?

10 A No.

11 Q Okay. Did you shut them, this permit
12 down for any reason between January '09 and July 2010 for a
13 permit having expired?

14 A No.

15 Q Okay. Did you realize the permit had
16 expired before this inspection on August 3rd of 2010?

17 A No.

18 Q Okay. To your knowledge, did Cambrian
19 realize it had expired?

20 A No.

21 Q Okay. The Non-Compliance, portion one of
22 the violation for mining when a permit had expired.
23 There's only two increments included in that, isn't that
24 right?

25 A Yes.

1 Q And what increments are there?
2 A Eighteen and nineteen.
3 Q Do you know how many increments there
4 were on permit 898-0619?
5 A I don't recall on them, ma'am.
6 Q Okay. At least nineteen, I guess?
7 A Yeah, there were a bunch.
8 Q Okay. Do you know, as we've said today
9 there were three Cambrian permits up in this area all
10 contiguous to one another, correct?
11 A Yes.
12 Q Do you know whether any portions of any
13 one permit were transferred to any other permits?
14 A Yes, there were some increments
15 transferred.
16 Q Okay. Do you know whether portions or
17 increments of 0619 were transferred to 0819?
18 A I believe there were, yes.
19 Q Okay. Any increments that were
20 transferred to another permit would then be governed by
21 that other permit, correct?
22 A Yes.
23 Q Okay. And whatever the terms and
24 conditions of that other permit would have been?
25 A Correct.

1 Q Okay. When it was realized this 0619 had
2 expired, the state had no choice but to, to order Cambrian
3 to stop doing anything on the permit until it was fixed,
4 correct?

5 A Correct.

6 Q Does that include active mining and
7 reclamation?

8 A I don't think it includes reclamation.

9 Q Okay. What were the remedial measures
10 that you instructed Cambrian to take?

11 A To cease all mining operations and bring
12 the area mined after permit expiration under permit.

13 Q Okay. That means they could get the
14 permit renewed?

15 A Right.

16 Q They could transfer these increments to
17 another permit?

18 A Correct.

19 Q Okay. Is there any other option? I
20 guess apply for a new permit?

21 A Apply for a new permit, yeah.

22 Q Okay.

23 A Renewal.

24 Q Is this a correctable violation?

25 A Yes.

1 Q Okay. During the time frame that the
2 permit was expired, did you say you continued to inspect
3 this permit, correct?
4 A Yes.
5 Q Okay. If Cambrian, during that time, had
6 not been conducting its mining operations pursuant to the
7 terms of 0619, you would have issued a Non-Compliance for
8 that, wouldn't you?
9 A Yes.
10 Q Okay. This Non-Compliance indicated that
11 the permit expired. That doesn't mean that during that
12 eighteen month, roughly, time frame, Cambrian was mining
13 willy-nilly, however it pleased--
14 A No.
15 Q --contrary to its permit terms?
16 A No.
17 Q Okay. Everything, unless there was a
18 Non-Compliance for it, everything they did during that time
19 was pursuant to their permit?
20 A Yes.
21 Q Okay. And the fact that this permit had
22 technically expired or for some reason was not renewed, the
23 fact of that expiration alone, that didn't cause the
24 flooding on Harless Creek, did it?
25 A No.

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1 Q Okay. Are you aware of any Non-
2 Compliances that were issued or did you issue-- issue any
3 Non-Compliances against Cambrian after the flooding for
4 failure to comply with permit terms or conditions?
5 A Not to my knowledge.
6 Q Okay. So no mining contrary to what was
7 outlined in their permit?
8 A No.
9 Q Okay. Now typically when a permit runs
10 out and is not renewed, it means bond has been released,
11 all the reclamation is done and there's no need to renew
12 it, right?
13 A Right.
14 Q Okay. When you allow your permit to
15 expire and you don't intend to renew it, all the
16 reclamation work better be done and your bond better be
17 released, is that right?
18 A Correct.
19 Q Okay. When a permit expires-- well, let
20 me ask you this first. You don't have any-- aware of any
21 intent on the part of Cambrian to allow its permit to run
22 out, not intend to renew it and yet continue to mine, are
23 you?
24 A No.
25 Q Okay. For whatever reason the 1A permit

1 technically expired, also technically all reclamation
2 should be complete?

3 A Yes.

4 Q Okay. So technically because Cambrian
5 did not renew this permit, technically the reclamation
6 should have been completed?

7 A Yes.

8 Q Okay. Let's then talk about part two of
9 this Non-Compliance, and if you want to take a look at it
10 you can. We-- we've had a lot of discussion about what
11 that means in this litigation. For example, it's been
12 suggested that that second violation on this Non-Compliance
13 means that Cambrian failed to do any reclamation whatsoever
14 on this permit. Is that what you meant?

15 A No.

16 Q Okay. Mr. Spadaro has testified on page
17 one thirty-six of his deposition this Non-Compliance means
18 Cambrian went outside its permit area, did no
19 contemporaneous reclamation, and this failure to do
20 reclamation existed for quite some time and that this was
21 to indicate that they had mined outside the permit area.
22 Is that what you meant?

23 A No.

24 Q Okay. Does this Non-Compliance mean
25 Cambrian hadn't done any reclamation at all on these

1 increments on this permit?

2 A No.

3 Q All right. It's your Non-Compliance, you
4 wrote it. Why don't you tell us what that means?

5 A It means that they had not completed
6 reclamation on, on some areas to the-- to the point where
7 they could apply for bond release.

8 Q Okay. So that's connected to the fact
9 that the permit expired?

10 A Yes.

11 Q Okay. So if the permit had not
12 technically expired, would that Non-Compliance have been
13 issued?

14 A On some areas it's possible it could have
15 been.

16 Q Okay.

17 A Due to the time frame.

18 Q Okay.

19 A Exactly, I don't remember exactly where
20 or what areas it would be, but it's possible.

21 Q It's possible?

22 A Yes.

23 Q Okay. But the Non-Compliance or this
24 violation really is linked to the fact that the permit
25 itself had expired and yet these increments weren't at

1 phase one?

2 A Yes.

3 Q Okay. Is that somewhat of a technical
4 violation?

5 A Yes.

6 Q Okay. Was this meant to suggest in any
7 way whatsoever that Cambrian was failing to do
8 contemporaneous reclamation, failing to reclaim their mine
9 site or ignoring their reclamation obligations?

10 A No.

11 Q Okay. The second part of this Non-
12 Compliance, did that have any causal factor to the flooding
13 on Harless Creek?

14 A I don't think so, no.

15 Q Okay. Were all of those increments
16 mentioned in Harless Creek? If, if you don't recall,
17 that's fine.

18 A I don't really remember. No, I don't.

19 Q Okay. Are you also familiar with
20 Cambrian permit 898-0620?

21 A 0620? Right now I can't remember which
22 one it is.

23 Q That's not a problem. Okay. Let me ask
24 you this. Any Cambrian permits, because we've had
25 discussion about a lot of them, any Cambrian permits that

1 were not within the Harless Creek watershed, would the
2 mining on any of those permits have had anything to do with
3 the flooding on Harless Creek?

4 A No.

5 Q Okay. You've also testified you're aware
6 of where Harless Creek is. Are you aware of where Jimmies
7 Creek is?

8 A Yes.

9 Q Is that in the Harless Creek watershed?

10 A No.

11 Q Could that have been impacted by the
12 Cambrian mines that are at issue here?

13 A Could Jimmies Creek been, been--

14 Q Impacted by the mining? Well, let me ask
15 you this way. The Cambrian permits, were any of them in
16 the Jimmies Creek watershed?

17 A I don't recall any of it being in Jimmies
18 Creek.

19 Q Okay. You have Cambrian, you have
20 Harless Creek, go up the mountain you have AEP, come down
21 and you have Jimmies Creek, correct?

22 A Yes.

23 Q Okay. We also had some discussion about
24 Non-Compliances that were issued to Cambrian on these
25 permits, on other permits in-- for conditions found in late

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P.O. BOX 476

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1-800-649-9052

1 2010 or 2007. Would those Non-Compliances have anything to
2 do with the flooding of July 2010?

3 A Not to the best of my knowledge.

4 Q Okay. Conditions that arose or occurred
5 months later wouldn't have anything--

6 A No.

7 Q --to do with the flooding, would they?

8 All right. The opinion has been offered by Mr. Spadaro and
9 proposed by the plaintiffs, that Cambrian's clear practice
10 with its mines is to never do any reclamation or take any
11 steps toward proper reclamation. As an inspector assigned
12 to multiple Cambrian permits would you agree with that
13 characterization?

14 A No.

15 Q Would the Cabinet or you as an inspector
16 allow an operator or permittee to keep mining if it never
17 took any steps toward reclamation?

18 A No.

19 Q Okay. That's part of what enforcement
20 action would be?

21 A Correct.

22 Q Okay. There's also been suggestion
23 raised that either under the-- the mining laws in Kentucky
24 or the terms of these Cambrian permits, it would be
25 improper to mine on more than one increment at a time. Is

1 that accurate?

2 A No.

3 Q Okay. Is there any requirement that you
4 complete mining and reclamation of one increment before
5 moving on to the next increment?

6 A No.

7 Q Okay. The breaking down of a surface
8 mine into increment has more to do with the bond than
9 anything, doesn't it?

10 A Correct.

11 Q And you can obtain bond release on
12 individual increments as you move along, correct?

13 A Yes.

14 Q There has also been an allegation that
15 the Non-Compliances issued by you and/or by the state are
16 evidence of intent or a plan by Cambrian to circumvent
17 mining laws and regulations and completely disregard those
18 laws. Did you ever find that to be the case when you were
19 inspecting Cambrian?

20 A No.

21 Q Okay. The Non-Compliances that you
22 issued, were they intended to provide evidence of that?

23 A No.

24 Q Permit 0619 and permit 0819 were active
25 permits at the time of the flooding, correct?

1 A Correct.

2 Q Okay. But permit 898-0618, that was
3 actually pretty far into reclamation, was it not?

4 A Yes, it was.

5 Q Was it being actively mined at the time
6 of the flooding?

7 A I don't think there's anyplace on it that
8 was actively mining.

9 Q Okay. After this storm event, did you
10 issue-- issue any Non-Compliances on these Cambrian permits
11 within the Harless Creek watershed for doing improper
12 reclamation or not doing the reclamation required by the
13 Department?

14 A I don't think so.

15 Q I understand that you were not the
16 inspector assigned to the AEP mine across the way. Did you
17 ever have opportunity or reason to go up on the AEP mine
18 site after this flooding event?

19 A I don't think I went on it after the
20 flooding event, no.

21 Q Okay. In what other areas in Pike County
22 did you have permits that really needed to be looked at
23 after this storm event in July of 2010?

24 A I had areas in, I can't remember what
25 that hollow's name is. I had a Cambrian permit on Road Creek.

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1-800-649-9052

1 Q Okay.
2 A Was that Road Creek? That wasn't Road
3 Creek.
4 Q If you can remember. He can't answer for
5 you. Okay.
6 A I can't remember.
7 Q That's fine. Fair enough.
8 A I'm getting old and I've been away from
9 it for a long time, but I did have other areas that needed
10 to be looked at, yes.
11 Q Okay. All right. Are you familiar with
12 where Raccoon Creek is?
13 A Yes.
14 Q Okay. Are you familiar with the flooding
15 that occurred over on Raccoon Creek?
16 A I have-- have some knowledge.
17 Q Okay. And there was a lot of damage over
18 there as well?
19 A Yes.
20 Q Are there-- were there any active surface
21 mining permits in Raccoon Creek to your knowledge?
22 A I think there was, but I really don't
23 know.
24 Q Don't know? Okay. You weren't assigned
25 to that?

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52.

1 A I was not assigned to anything on Raccoon
2 Creek.

3 Q Okay. All right. After the flooding
4 there were several public meetings held at a church down
5 at, at the mouth of Jimmies Creek to which the plaintiffs
6 were invited and Mr. Spadaro was there and a hydrologist
7 was there, the press was there. Were you or, to your
8 knowledge, anyone from the state invited to come to these
9 public meetings and talk to the residents about Harless
10 Creek, what had occurred or whether the mining had any role
11 in that?

12 A I don't remember anything.

13 Q Mr. Spadaro was one of a group that took
14 a tour, conducted an inspection of the Cambrian mine site
15 in August of 2010 and you were on that, part of that group,
16 were you not?

17 A Yes.

18 Q Okay. There were officials from, or
19 employees of Cambrian that were there, various officials
20 from the state, I believe Freddie Coleman and Mr. Spadaro,
21 is that correct?

22 A Yes.

23 Q Okay. Were you with Mr. Spadaro, or was
24 the whole group staying together during that whole course
25 of that inspection?

1 A Pretty much, yeah.

2 Q Okay. So whatever he saw you would have
3 seen as well?

4 A Yes.

5 Q Okay. Mr. Spadaro has offered the
6 testimony that there was a massive slip failure above SS-
7 39, massive debris flow and earth movement below SS-39 into
8 Harless Creek, with evidence of SS-39 clearly having
9 overtopped and sediment overflowing SS-39. Is that
10 something you observed.

11 A I don't remember to that extent, no.

12 Q Okay. You already testified that SS-39
13 did not overtop?

14 A It did not overtop.

15 Q Okay. You didn't see any signs of
16 sediment overflowing the top of SS-39?

17 A No.

18 Q If you didn't see signs of sediment
19 overflowing the berm of SS-39, you wouldn't have seen
20 sediment flowing down from the berm towards Harless Creek
21 then, right?

22 A Correct.

23 Q Okay. He also testified that at the time
24 all of you were there on that group inspection heavy
25 equipment was removing the sediment material that had

1 overtopped SS-39 from the top of the berm. Did you witness
2 anything like that?

3 A No.

4 Q Okay. Do you recall whether anyone,
5 while on that inspection with Mr. Spadaro and the others
6 down around SS-39, whether anyone from Cambrian made
7 statements or admissions that the pond had overtopped?

8 A No.

9 Q During your inspection of the Cambrian
10 permit after the flooding, did you find evidence within the
11 Harless Creek watershed of multiple diversion breaches and
12 slides going all the way through the woods down towards the
13 creek or into the creek?

14 A I don't remember any, no.

15 Q Mr. Spadaro also testified there was no
16 vegetation on the Cambrian site, or no vegetation to speak
17 of, a very poorly reclaimed area, much of it hadn't been
18 reclaimed at all, no attempt to grade, seed, or mulch the
19 mining area. Would you agree that was the condition of
20 permit 0619?

21 A No.

22 Q Did Cambrian at anytime mine, mine
23 outside its approved and permitted area on these jobs in
24 relation to the flooding of Harless Creek, in that time
25 frame?

1 A No. I don't think there was any off
2 permit mining in that area.

3 Q Okay. Did you cite Cambrian after the
4 flooding of July of 2010 for mining outside the permit area
5 without approval?

6 A No.

7 Q Is it your opinion, as a mine inspector
8 assigned to this mine, that immediately following the rain
9 event of July 17, 2010 that the vast majority of the
10 Cambrian sites were not in compliance with the law?

11 A No.

12 Q I asked you earlier whether you were
13 pleased, displeased, happy, disgusted, what have you, with
14 how the sediment structure withstood this storm event, but
15 let me ask you the same question about the permits in
16 Harless Creek in general. Were you pleased, displeased,
17 surprised, disgusted, what have you, what was your overall
18 opinion of how these permits withstood this significant
19 rain event of July 2010?

20 A I thought the permits held up
21 exceptionally well for the amount of rain that we had.

22 MS. MAINES: I think for the moment
23 that's all I have. I may have more after Mr. Pillersdorf,
24 but for the moment that's all I have. Thank you very much.
25

CROSS EXAMINATION

BY MR. PILLERSDORF:

Q Mr. Stapleton, do you have a copy of the citations you wrote with effect to again, 898-0619? Susan, do you have an extra copy so he can look at it?

MS. MAINES: What's the Non-Compliance number?

MR. PILLERSDORF: It's the one about failing to reclaim and without a permit. Do you have a copy of that in front of you?

MS. MAINES: Is it 53-2479?

MR. PILLERSDORF: Let me just-- go make a copy of all this.

MS. TYREE: Okay.

MR. PILLERSDORF: Make sure he's got a complete copy of all that.

MS. MAINES: This is Mr. Simonton's copy.

MR. PILLERSDORF: You don't have a copy of that?

MS. MAINES: I don't believe I do.
Q While she's doing that, Mr. Stapleton, why did you resign?

A I had enough time in and I was burnt out.

Q Okay. Did your resignation have anything

1 to do with the events on Harless Creek?

2 A Maybe to a small degree.

3 Q Okay. Why do you say to a small degree?

4 A From January the 1st of 2010 until the

5 flood in July, the area I had, I had a very active area and

6 I had over forty-some, I can't remember the exact number,

7 forty-some complaints, citizen complaints on coal companies

8 during that time. After the flood I got forty-some more

9 and I got tired of writing letters.

10 Q When you say you got tired of writing

11 letters, what do you mean by that?

12 A Letters to the citizens as part of the,

13 the process of investigating the citizen's complaint.

14 Q Okay. What was irritating about that?

15 A The amount of time it took in regards to

16 my other duties.

17 Q Let the record reflect I'm showing him a

18 copy of-- well, you tell us what exactly that's a copy of.

19 A It's a copy of my notice of Non-

20 Compliance 53-2479.

21 Q Okay. Is that for-- is that permit

22 number 898-0619?

23 A Yes.

24 Q Okay. As I understand it, on this set of

25 documents on page two there's an area indicated acres

1 permitted, acres bonded, acres disturbed, and acres
2 reclaimed. Do you see that?

3 A Yes.

4 Q Okay. Just for the record, was it-- do
5 you fill in those numbers?

6 A Yes.

7 Q Okay. How many acres were, were
8 permitted?

9 A The total permitted is five hundred and
10 sixty-seven point four six.

11 Q Okay. And how many acres were disturbed?

12 A Five ninety-two eighty-six.

13 Q Explain to me why there are more acres
14 disturbed than acres permitted?

15 A I really don't know. It could be a typo.

16 MS. MAINES: I'm not sure what
17 you're looking at, but I see acres permitted, acres bonded
18 as five ninety-six, and acres disturbed is something
19 different.

20 Q Explain the difference between acres
21 permitted and acres bonded.

22 A It was acres bonded, I'm sorry. Acres
23 disturbed is three twenty-five.

24 Q Okay. Now on acres disturbed, do you
25 have an independent recollection why you indicated three

1 twenty-five? Was it because sort of the mining operation,
2 they were reclaiming it or what was going on?

3 A I don't really understand what you asked.

4 Q Why did you write three hundred and
5 twenty-five for estimated acres disturbed?

6 A That's what we estimated that was
7 disturbed on that permit.

8 Q Okay, what's your definition of
9 disturbed?

10 A A disturbance different from original
11 ground.

12 Q Okay. And how many acres did you
13 indicate were reclaimed?

14 A A hundred.

15 Q And the hundred acres that were
16 reclaimed, tell me exactly where those hundred acres were,
17 sir, on this permit.

18 A I can't tell you that.

19 Q Now you indicated earlier in response to
20 Ms. Maines' question you weren't sure if this was in
21 Harless Creek or perhaps another area. Isn't it true that
22 the hundred acres that were reclaimed were not in the
23 Harless Creek watershed, sir?

24 A I really don't remember.

25 Q Have you ever looked at the video of the

1 area?

2 A No, I have not.

3 Q There's helicopter footage showing this
4 entire area, sir. I would represent to you most of the
5 video indicates there are vast areas of barren land. Is it
6 your testimony that this area was reclaimed or not
7 reclaimed, sir?

8 A In what area are you speaking of?

9 Q Well, this permit right here.

10 A Is there some reason that, that you are
11 aggressively attacking me?

12 Q Let me ask you a question. Do you think,
13 were these people cited for failing to simultaneously
14 reclaim? Did you cite them for that?

15 A Did I cite them for what?

16 Q Specifically did you cite them for
17 failure-- well, let me ask you, did you cite them for
18 failure to meet the required reclamation within the
19 specified time of five hundred and forty days?

20 A Yes.

21 Q Did they do that?

22 A Did they fail to do that?

23 Q Yes, sir.

24 A Yes.

25 Q A few minutes ago you were praising their

1 reclamation effort, correct, sir?

2 A Yes.

3 Q What is contemporaneous reclamation?

4 A Pardon?

5 Q What is contemporaneous reclamation?

6 Have you ever heard of that phrase?

7 A Yes, I have.

8 Q What do you understand it to be?

9 A I understand it to be to reclaim in a
10 contemporaneous manner.

11 Q And you were out there inspecting once a
12 month these, these increments?

13 A Yes.

14 Q And what percentage of this area would
15 you say was reclaimed in the Harless Creek watershed?

16 A In the Harless, in the Harless Creek
17 area?

18 Q Yes, sir.

19 A In that area there were no final
20 reclamation.

21 Q Well, what percentage was reclaimed or
22 not reclaimed?

23 A Fifteen to twenty percent maybe.

24 Q Was reclaimed or not reclaimed?

25 A Was reclaimed.

1 Q So eighty percent was not reclaimed,
2 correct, sir?

3 A Yes. It was part of an active mining
4 operation.

5 Q Okay. Was it all active mining?

6 A In the Harless Creek area?

7 Q Yes, sir.

8 A It facil-- some of it facilitated active
9 mining, yes.

10 Q What do you mean facilitated active
11 mining?

12 A Well, there was, there was roads and
13 sediment ponds, diversion ditches.

14 Q Do you-- did you view your job just
15 philosophically in terms of contemporaneous reclamation, as
16 protecting the public? Was that part of your job?

17 A Yes.

18 Q Do you agree with me if a coal company
19 does not do contemporaneous reclamation in close proximity
20 to human beings, that creates a danger to the citizens
21 below?

22 A It could, yes.

23 Q It could? Do you agree with the concept
24 if you don't reclaim, when a heavy rain comes it endangers
25 the citizens below?

1 A Pardon now?

2 Q Do you agree that one reason we have the

3 contemporaneous reclamation regulation is for public safety

4 and that if you don't reclaim and a heavy rain comes, it

5 endangers the citizens and their properties below?

6 A Not necessarily.

7 Q You don't believe in that concept?

8 A Not necessarily, no.

9 Q Do you view any of your duties in terms

10 of making sure this area above where my clients lived was

11 reclaimed as protecting them?

12 A Yes.

13 Q Or do you view your role as maybe

14 protecting the coal companies?

15 A No.

16 Q Let's go back to why you left your

17 employment. Were you asked to leave?

18 A No, I was not.

19 Q Were you reprimanded in any way?

20 A Not at all.

21 Q If I were to look at your personnel

22 record, what would it show?

23 A It would show nothing.

24 Q Okay. So you just decided to resign six,

25 seven weeks after this flood event, correct, sir?

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1 A Yes. I had been debating it before that.

2 Q Okay. Let's talk about this failing--
3 the-- let's look at, let's go back to that exhibit.

4 Permitting expiration of the permit engaged in coal removal
5 on a surface mining operation does not have a valid permit.
6 How long did they not have a valid permit?

7 A I don't really recall.

8 Q But it had been expired for more than a
9 year?

10 A Somewhere in that area, yes.

11 Q Okay. Is it your job, part of your duty
12 to determine if a coal company has a valid permit?

13 A Yes.

14 Q Okay. And on eighteen and nineteen it
15 did not have a valid permit?

16 A Correct.

17 Q And do you happen to know if the Cabinet
18 notifies people when the permit expires?

19 A Yes, they do, sir.

20 Q Do you know if such, such a letter went
21 from the Cabinet?

22 A I don't recall.

23 Q Did you-- would you have received a copy
24 of that?

25 A I think we got notification when they

1 sent those. I believe, I'm not sure.

2 Q See, I don't understand that, Mr.
3 Stapleton. As I understand from Mr. Blackburn's
4 deposition, Cambrian was notified that their permit had
5 expired.

6 MS. MAINES: I'm going to object to
7 the characterization of Mr. Blackburn's testimony, but go
8 ahead.

9 Q Well, he testified that there was
10 actually a notification letter sent. Would you have gotten
11 a copy of that?

12 A I believe we did, but I'm not sure. I
13 can't, I can't recall.

14 Q Okay. Would you have gotten that letter
15 before or after the flooding?

16 A It would have been before.

17 Q Specifically, do you know why the permit
18 expired?

19 A I think it was just an oversight on my
20 part and Cambrian's.

21 Q Okay. Did it have anything to do with
22 the reclamation or failing to reclaim?

23 A No.

24 Q Okay. If you fail to reclaim an
25 increment, is that a violation of your permit?

1 A Yes.

2 Q Okay. Did that happen in this case?

3 A Yes.

4 Q Okay. How many increments did Cambrian
5 fail to reclaim on the Harless Creek watershed?

6 A I don't remember.

7 Q Why don't you take a look at your
8 document? Is it six?

9 A This does not show me whether it's in
10 Harless Creek or not.

11 Q Okay. Well, do you happen to know?

12 A No, I don't.

13 Q Why don't you take a look at-- there's
14 some pictures attached to your report, correct? Look at
15 the first set of pictures. It indicates the inspector is
16 Greg Stapleton. Is that you?

17 A Yes.

18 Q Okay. Tell me what, what that picture
19 depicts? Looking at the top picture.

20 A The photo depicts the area from left
21 center of ridge where mining occurred after expiration of
22 permit.

23 Q Do you know if that picture was taken in
24 the Harless Creek watershed?

25 A I think part of it is and part of it's

1 not.

2 Q Okay. Well, it says it abuts-- permit
3 898-0619 abuts 898-0819. Do you know if that's in the
4 Harless Creek watershed there?

5 A I think it was. Part of it, yes.

6 Q What does that picture depict, an active
7 mine site or just some barren land?

8 A This is-- this was actually an active
9 mine site if I'm not mistaken.

10 Q Okay. How about the picture down below,
11 what does that show? The same page.

12 A That depicts an area where mining has
13 occurred after expiration on increment nineteen that abuts
14 permit 898-0618.

15 Q Okay. Is there any evidence of
16 reclamation in those two pictures?

17 A No. This one they had just finished
18 mining on.

19 Q Okay. And let's go to the third page.
20 There's two pictures dated, photo date 8/3/2010, it says
21 "photo depicting increments nineteen and twenty." Do you
22 see that?

23 A Yes.

24 Q Okay. What does that picture depict, the
25 top one?

1 A You want-- you asked me to read the
2 description?

3 Q Yes, sir.

4 A "Photo depicts increments nineteen and
5 twenty and the failure to complete reclamation within
6 required time frame."

7 Q Okay. Is that an active mine site, sir?

8 A I really don't know where this one's at.
9 I can't remember.

10 Q Does it look like it's been fully
11 reclaimed?

12 A No.

13 Q I think you indicated earlier you thought
14 that Cambrian had reclaimed maybe fifteen or twenty percent
15 of the area?

16 A I'm just guessing. I don't remember.

17 Q Okay. Would you put this picture in the
18 fifteen percent they reclaimed or the eighty percent or
19 eighty-five percent they didn't reclaim?

20 A Well, this, this part here, it had no
21 reclamation on it, but I don't know where it lies,
22 therefore I can't make a judgment.

23 Q Then why did you take the picture?

24 A I don't know that I actually take-- took
25 these pictures.

1 Q Okay. It indicates with the pictures, it
2 says inspector Greg Stapleton. Did you have something to
3 do with it?

4 A I was probably on, on-- I mean I was on
5 the inspection, but Gene was also with me and he could have
6 take-- taken these pictures.

7 Q And what's the picture down below? Do
8 you recognize where that is?

9 A I can guess, yes.

10 Q Okay. Take a guess.

11 A I think this is out on the, the end of
12 the top section.

13 Q Okay. What's going on in that picture?

14 A Failure to complete reclamation on this
15 permit.

16 Q Did you issue a citation for that?

17 A Yes.

18 Q To your knowledge, what's the status of
19 the citations you issued?

20 A I have no idea.

21 Q Okay. As we sit here today do you know
22 if increment eighteen has ever been reclaimed?

23 A No, I don't.

24 Q Okay. You, you have been asked a lot of
25 questions about what's in the Harless Creek watershed,

1 what's not in the Harless Creek watershed. Is increment
2 fifteen in the Harless Creek watershed?

3 A I have no idea.

4 Q Increment sixteen?

5 A I have no idea.

6 Q Eighteen?

7 A I don't recall.

8 Q Nineteen?

9 A I think eighteen and nineteen might be in
10 Harless Creek, but I really don't know.

11 Q Do you remember where Jimmy and Wilma
12 Oney lived?

13 A No, I don't.

14 Q Did you go up Harless Creek after the
15 flood?

16 A I actually never went up Harless Creek
17 after the flood.

18 Q Do you know how close the closest
19 residents were to this mining operation?

20 A I don't remember, no.

21 Q Fairly close to human beings? Was the
22 mining operation fairly close to where people lived?

23 MS. MAINES: Objection to form. Go
24 ahead.

25 A Some, some-- some areas, yeah.

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1 Q And how close was these permits to where
2 people live, do you know?
3 A I couldn't tell you exactly, no.
4 Q Specifically, have you ever been up
5 Harless Creek?
6 A Yes, I have.
7 Q Have you ever been to the head of it?
8 A Yes, I have.
9 Q Were there some homes there?
10 A In the head?
11 Q Yes, sir.
12 A No, there were not.
13 Q Okay. Have you ever been up the hollow
14 called Harless Creek?
15 A Yes, I have.
16 Q Okay. Were there some homes at the top
17 of it?
18 A At the top of?
19 Q Harless, of the hollow where-- ever been
20 to the top of Harless Creek where the last homes are?
21 A Yes.
22 Q Do you have any estimate how close that
23 those homes were to the mining activities?
24 A In that area, I-- two thousand feet, I'm
25 guessing.

1 Q Two thousand feet. That would be less
2 than a mile?

3 A Yes.

4 Q Do you know what happened to those homes
5 that were close?

6 A Yes. I know that they were flooded and--

7 Q They flooded? How about washed away?

8 A I don't know.

9 Q Do you know as we sit here today, what
10 was the status of the reclamation closest to these homes
11 that were two thousand feet away? Were they fully
12 reclaimed or were they not reclaimed at all, sir?

13 A I can't recall.

14 Q You can't? You were the inspector,
15 correct?

16 A Yes.

17 Q As we sit here today, can you give us any
18 idea in terms of the area closest to where my clients
19 lived, you indicated you thought maybe they had reclaimed
20 fifteen or twenty percent, was that part of the fifteen or
21 twenty percent they reclaimed or were the areas closest to
22 where my clients lived not reclaimed at all?

23 A I, I really don't recall.

24 Q As part of your inspection afterwards,
25 did you get a look at an aerial view?

1 A No, I did not.

2 Q To this day have you ever looked at any
3 of the aerial footage?

4 A No, I have not.

5 Q Why did you make the decision to cite
6 them for failing to reclaim fifteen, sixteen, eighteen,
7 nineteen, twenty, and twenty-two?

8 MS. MAINES: I'm going to object.
9 It doesn't say failing to reclaim.

10 Q Well, why did you write permittee shall
11 reclaim areas? Why did you cite them for that?

12 A This was a, a joint effort and Mr.
13 Blackburn instructed me to write this.

14 Q Were you opposed to writing it or was
15 it--

16 A No.

17 Q --Mr. Blackburn's idea?

18 A No.

19 Q You think they needed to reclaim those
20 areas?

21 A Some areas did need to be reclaimed, yes.

22 Q Did you ever have any discussion with Mr.
23 Blackburn about this, the fact that this permit had expired
24 more than a year ago?

25 A No.

1 Q Was there ever any discussion about how
2 did this-- how did we allow this to happen?

3 A After the fact, yes.

4 Q Okay. What was the discussion?

5 A That, how did this happen and--

6 Q Yes, sir.

7 A --it was just an oversight.

8 Q Okay. An oversight by who?

9 A By myself, by Mr. Blackburn, and by
10 Cambrian.

11 Q What did Cambrian do wrong?

12 A They didn't renew it.

13 Q Okay. Did you ever have any training on
14 contemporaneous reclamation?

15 A Yes.

16 Q Okay. What do you understand is the
17 purpose of that?

18 A Contempor-- contemporaneous reclamation?

19 Q Yes, sir.

20 A To reclaim within a, a certain time
21 frame.

22 Q Do you have any philosophical views as to
23 whether that should or should not be the law?

24 A Philosophical views?

25 Q Yes, sir.

1 A I mean yes, it does need to be reclaimed
2 in a, in a certain time frame.

3 Q Do you think it needs to be reclaimed
4 because it's just a technical requirement or is there-- or
5 is there a public safety reason?

6 A If you want to go into fine details,
7 yeah, it could go into public safety.

8 Q Why could it go into public safety?

9 A Well, I don't know. You're asking me
10 to, to guess.

11 Q Do you think that failing to reclaim
12 increases water flow after a rain event?

13 A Yes, but you also have sediment
14 structures and diversions to handle that water.

15 Q So do you think it's acceptable not to
16 reclaim if you have sediment structures?

17 A I didn't say that.

18 Q Let me ask you about-- explain the
19 difference to me between permit number 0619 and 0819.
20 They're, they're both Cambrian, correct?

21 A Correct.

22 Q Okay. Do you know and I-- they, they go
23 through different areas of land, correct?

24 A Correct.

25 Q Do you know which is closer to the

1 Harless Creek watershed?

2 A 0619.

3 Q Okay. Now 0619, that's the one we talked
4 about and I think you said they reclaimed, I don't want to
5 put words in your mouth, fifteen, twenty percent, is that
6 what you said earlier?

7 A Yes. I guessed at that, yes.

8 Q Okay. In 0819, what was the-- how much
9 was reclaimed there, do you know?

10 A 0819?

11 Q Yes, sir.

12 A That was a new permit. I don't think
13 there was anything reclaimed.

14 Q Okay. When you say new, was there
15 anything disturbed on 08?

16 A Yes.

17 Q Okay. What was disturbed?

18 A It was, it was a small amount. I really
19 don't recall exactly what it was.

20 Q Okay. In looking at 0819-- do you have
21 that in front of you, sir?

22 MS. MAINES: Have what in front of
23 him?

24 MR. PILLERSDORF: The 0819.

25 MS. MAINES: 0819 is the permit.

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1 Q Well, did you write a violation to 0819
2 on 8/3/2010?

3 MS. MAINES: What's the Non-
4 Compliance number?

5 MR. PILLERSDORF: Non-Compliance
6 number.

7 MS. MAINES: 2478? Yeah.

8 Q 53-2478, have you got that in front of
9 you?

10 A No, I don't.

11 MR. PILLERSDORF: Do you have a
12 copy for him? Do you have an extra copy?

13 MS. MAINES: He can look at mine as
14 long as I get it back.

15 Q Did you write that Non-Compliance?

16 A Yes.

17 Q And what's that Non-Compliance about?

18 A Permittee/operator has failed to pass all
19 surface drains through approved sediment control. Breaches
20 within the berm of SS-9A and SS-9B allowed water to leave
21 permitted area without passing through approved sediment
22 control.

23 Q Okay.

24 MS. MAINES: I just want to note
25 that he's already testified this was not in the Harless

1 Creek watershed.

2 Q Now I want to ask you about the pictures.
3 Where, where was this area?

4 A This is on the back side of 0819 if my
5 memory serves me right.

6 Q This one adjoins 0619, doesn't it?

7 A Yes, it does.

8 Q Okay. If I understand, in this permit
9 there were zero areas, zero amount reclaimed, correct, zero
10 acres?

11 A Yes. The best that I remember.

12 Q Let me see if I understand this.
13 Cambrian had three permits near Harless Creek, correct?

14 A Yes.

15 Q Okay. And the area most proximate or
16 closest to where the flood damage occurred on Harless Creek
17 was permit 0619?

18 A Yes.

19 Q Okay. And as we sit here today, can you
20 tell me which increment is closest to Harless Creek where
21 my clients lived?

22 A No, I cannot.

23 Q And the last inspection you made prior to
24 the Harless Creek flood event was when? Was it a day
25 before, a week before, a year before?

1 A I have no idea.
2 Q Well, would it have been months or years?
3 A It would have been months, I mean a
4 month.
5 Q What's a pre-enforcement notice?
6 A A pre-enforcement? I have no idea.
7 Q The normal procedure when a permit
8 expires, do you get-- does a coal company get a notice
9 before it expires or after it expires or both?
10 A Before.
11 Q Before it expires?
12 A I think now. I'm not sure exactly what
13 you're asking.
14 Q I may be mistaken, but I think Mr.
15 Blackburn told us they actually got a notice after it
16 expired as well.
17 MS. MAINES: I object.
18 Q Are you aware of any of those notices
19 before, during, or after the permit expires?
20 A I really don't-- I really don't know what
21 kind of-- what the pre-enforcement notice is.
22 Q Okay. And as I understand it, the reason
23 the permit expires is, you have an agreement that you must
24 reclaim within five hundred and forty days, is that
25 correct?

1 A Yes.

2 Q Okay. And they didn't reclaim within the
3 five hundred and forty days, did they?

4 A No.

5 Q Is that the reason the permit expired?

6 A No.

7 Q Okay. All right. Then explain to me
8 why, is there a different violation for not reclaiming
9 within the five hundred and forty days? Well, if you don't
10 reclaim it within five hundred and forty days, what do you
11 cite them for?

12 A Failure to, to renew the permit. To--
13 mining without a permit, if you're not-- you don't renew
14 it.

15 Q Now listen. You may have misunderstood
16 my question. If you don't release-- was Cambrian under an
17 obligation on these permits to reclaim within five hundred
18 and forty days, sir?

19 A Yes, they was.

20 Q Okay. Did they do that?

21 A No.

22 Q Okay. On how many different permits did
23 they fail to reclaim within five hundred and forty days?
24 On how many different increments did they fail to reclaim
25 within five hundred and forty days?

1 A Whatever is listed here.

2 Q Six?

3 A I think that's what it was.

4 Q Okay. And the mechanism, if you fail to

5 reclaim within five hundred and forty days, does that

6 result in you being cited for failing to reclaim or does

7 that result in you actually losing your permit?

8 A I don't remember.

9 Q Okay. Isn't it true you actually also

10 lose your permit? You also lose your permit if you don't

11 reclaim within the time period, isn't that true, sir?

12 A I think so.

13 Q Well, you've been doing this for twenty

14 years, right?

15 A I've been out of it for two, yeah.

16 Q Okay. Do you recall why you would cite

17 someone for mining without a permit?

18 A Do I recall why?

19 Q Yes, sir.

20 A It's part of the law.

21 Q Okay. In this particular case, isn't it

22 true the reason they lost their permit was they failed to

23 reclaim within the five hundred and forty days, correct,

24 sir?

25 A They had let their permit expire, yes.

1 Q And actually their permit expired what, a
2 year and a half before this flood event?

3 A Yes.

4 Q And your testimony is on the day you
5 heard about the Harless Creek flood, you were not aware
6 that-- that they had these issues about their permit
7 expiring?

8 A Correct.

9 MR. PILLERSDORF: Okay. That's
10 all.

11
12
13
14 RE-DIRECT EXAMINATION

15 BY MS. MAINES:

16 Q When a permit is issued, it has an
17 expiration date, correct?

18 A Correct.

19 Q And that expiration date is a date by
20 which, excuse me, you need to renew if you're planning to
21 renew, correct?

22 A Correct.

23 Q The expiration date on this permit was
24 January 22nd, 2009, correct?

25 A Yes.

1 Q That's the date that would have been set
2 at the time this permit was granted?
3 A Yes.
4 Q Okay. So if you, I'm not and I don't
5 want to suggest that this is what occurred, but if you fail
6 to comply with some portion of your permit and you get a
7 Non-Compliance for that, that does not automatically result
8 in you losing your permit, does it?
9 A No.
10 Q Okay. Before a coal company is going to
11 lose its permit, there has to be some significant
12 enforcement action?
13 A Correct.
14 Q Okay. Even if there is some sort of
15 imminent danger order posed or, or issued, the mine might
16 get shut down temporarily, but the permit is not pulled
17 because of just the IDCO, correct?
18 A Correct.
19 Q It takes a lot more before a permit would
20 actually be pulled or removed, correct?
21 A Yes.
22 Q In this instance, the Non-Compliance for
23 the permit having expired, didn't that just relate to the
24 fact that the permit's given original expiration date had
25 come and gone?

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P.O. BOX 476

ALLEN, KENTUCKY 41601

1-800-649-9052

1 A Yes.

2 Q Okay. So it wasn't that Cambrian
3 forcibly had its permit removed or triggered some kind of
4 statutory provision removing a statute because you listed
5 the Non-Compliance on the reclamation?

6 A Right.

7 Q Okay. Now a couple of times it's been
8 said about having to reclaim within five hundred and forty
9 days, and I just want to be clear on the record because
10 it's never been said, reclaim within five hundred and forty
11 days of what? I mean what starts the five hundred and
12 forty days?

13 A Initial disturbance in that area.

14 Q Initial disturbance? Okay. And that is,
15 that five hundred and forty days that was granted Cambrian
16 under 0619 permit, that was a variance from the statutory
17 provision, correct?

18 A Correct.

19 Q Okay. And variances on the time frame
20 are frequently given based on any number of things?

21 A Yes.

22 Q Okay. And it's the state that makes the
23 decision whether or not that variance is going to be given,
24 correct?

25 A Correct.

1 Q Okay. When the permit technically
2 expires because it's reached its original expiration date,
3 are all the variances eliminated, and does the original law
4 as written of why?

5 A Could you say that one more time? I'm
6 sorry.

7 Q Yes. You're given some kind of variance
8 on a permit--

9 A Yes.

10 Q --on a time frame. The permit expires
11 like it did in this case because for some reason it just
12 wasn't renewed.

13 A Right.

14 Q Does that eradicate those variances such
15 as the original time frame and the law required, if you
16 know?

17 A I, I really don't remember.

18 Q Okay. The-- in this particular instance
19 in those increments, what-- what type of mining was going
20 on in that area? What was the disturbance? What type of
21 mining was there?

22 A On the increments that were cited?

23 Q Yes, sir.

24 A On those, those increments, to the best I
25 recall, eighteen and nineteen, they were-- they had an

1 active road.

2 Q Okay.

3 A And of course, there were sediment ponds.

4 Q And is there anything else in those two
5 increments?

6 A Eighteen or nineteen one, might have--
7 might have been just one area. Let's see if I can-- this
8 area right here.

9 Q Which is hard to see, the photograph
10 you're looking at there.

11 A Yes.

12 Q All right. Let me ask you this. If the
13 permit-- and we discussed this earlier, when one's permit
14 expires such that it's not intended to be renewed,
15 reclamation is supposed to be completed?

16 A Yes.

17 Q Okay. Because this permit had expired
18 and because reclamation had not been completed, they got
19 the second part of the Non-Compliance, correct?

20 A Right.

21 Q If-- was 0619 in compliance with
22 contemporaneous reclamation had the permit not expired?

23 A Yes.

24 Q Okay. You were asked a lot of questions
25 about whether any portion of 0619 was reclaimed and why it

1 might not have been. It would have to be anticipated
2 during the period of active mining that there are going to
3 be areas of unreclaimed land, correct?

4 A Correct.

5 Q During the active phase, while you're
6 still removing the coal, it's not going to be going through
7 reclamation, correct?

8 A Correct.

9 Q Which is anticipated, provided for, and
10 allowed for in the regulations?

11 A Correct.

12 Q Okay. Now some of the photographs that
13 you looked at on Non-Compliance 2479, the first photograph
14 that says "photo depicts the area from left center of ridge
15 where mining occurred after expiration of permit," in the
16 photo below that we see a road in these pictures, don't we?

17 A Yes.

18 Q Okay. So that was the mine road that
19 they were using to get around portions of the permit?

20 A Correct.

21 Q So they're not going to be reclaiming
22 that road while they're still using it to get around the
23 permit?

24 A Right.

25 Q And that's appropriate?

1 A Yes.

2 Q Considering the stage of mining that 0619

3 was in, was it inappropriate or wrong or in violation of

4 the law for only twenty percent of it to be in a reclaimed

5 state?

6 A No. When I said fifteen to twenty

7 percent, part of that is-- has been reclaimed, but not

8 final reclamation.

9 Q Okay. And, and that's how the process

10 goes, is that right?

11 A Correct.

12 Q Let me ask you, if 0619 had been timely

13 renewed, would anything have-- have changed in terms of

14 what was allowed under the permit in terms of the mode or

15 manner of-- of mining?

16 A No, I don't think so.

17 Q Okay. And so if the permit had been

18 renewed, Cambrian would have gone on and did exactly what

19 apparently it did do when it didn't realize the permit

20 expired?

21 A Correct.

22 Q Okay. So there was no difference in, in

23 what took place on that mine, just that the permit

24 technically had hit its expiration date?

25 A Correct.

1 Q All right. The Non-Compliance relating
2 to that where it says "failed to achieve required
3 reclamation within time frame," it's been suggested that
4 that means one, Cambrian failed to do any reclamation at
5 all. Is that what you meant?

6 A No.

7 Q Okay. Is that time frame in that
8 citation linked to the fact that the permit had hit its
9 original expiration date?

10 A Yes.

11 Q Okay. You were asked some questions
12 about knowing where various increments and such things
13 were. Would it be fair to say that you would be more
14 familiar with where-- and I obviously understanding you've
15 been retired now almost two years, more familiar with where
16 given sediment structures and hollow fills were and those
17 numbers as opposed to increment numbers?

18 A Yes.

19 Q Okay. The structures on a given surface
20 mine are identified by like SS-39 that we've been talking
21 about, correct?

22 A Correct.

23 Q So structures are not identified on a
24 mine site by increments?

25 A No.

1 Q Okay. Those increments refer to how the
2 mine has been divided up for purposes of bond release, or
3 obtaining bond and then bond release?

4 A Correct.

5 Q All right. Part of the reclamation
6 process obviously involves mulching, seeding, those types
7 of things?

8 A Yes.

9 Q Okay. In a rain event such as the one on
10 July 17th, 2010, is it possible that type of beginning
11 reclamation is washed away and has to be redone?

12 A Yes. It-- I mean it could happen, yes.

13 Q Okay. The fact that some of that may not
14 have been-- early stages of reclamation may not have seen
15 post flooding, doesn't mean they weren't there when the
16 rain came down, does it?

17 A Correct.

18 Q Okay. You mentioned a minute ago that
19 during the active phase of mining, because of the bare
20 land, that's why sediment structures and diversions are
21 required to be put in place to handle the water, is that
22 correct?

23 A Yes.

24 Q All right. In your opinion as a mine
25 inspector with twenty-two years experience and based on

1 your inspection of these Cambrian permits in the Harless
2 Creek watershed after the July 17th, 2010 flood, did the
3 sediment structures and diversions handle this rain event?

4 A Yes. For the most part they did.

5 Q And again, considering the amount of
6 rain, were you pleased or displeased with how this permit
7 held up?

8 A I was pleased.

9 Q Okay. Did it hold up better or worse
10 than other permits you looked at?

11 A It held up better than some.

12 MS. MAINES: Okay. I tell you
13 what, if we can I'd like to take a break for just a moment.
14 Go off the record.

15 VIDEOGRAPHER: Off the record,
16 eleven forty-four a.m. Back on the record, eleven fifty-
17 five a.m.

18 Q Mr. Stapleton, I want to again look very
19 quickly at some of these pictures that were attached to
20 your Non-Compliance 53-2479 on permit 0619. There was some
21 discussion about backfill and such shown in these
22 photographs. And there is some backfill in these
23 photographs, correct?

24 A Yes.

25 Q Where we see the backfill in these

1 | photographs, those areas were intended to store the
2 | backfill actually for the purposes of putting this area
3 | back the way it used to be, isn't that right?

4 | A | Correct.

5 | Q | Okay. So you would expect and intend for
6 | backfill to be put in those areas as placed in order to put
7 | the area back the way it used to be?

8 | A | Correct.

9 | Q | Okay.

10 | A | That's, that's what I meant when I said
11 | it was partially reclaimed, but not final reclamation.

12 | Q | Okay. So the mere fact that we don't see
13 | vegetation and trees, or what have you, growing on the
14 | mining area does not mean that the reclamation process has
15 | not begun?

16 | A | Correct.

17 | Q | Okay. Part of the reclamation process is
18 | putting the contours back as best as possible to their
19 | original contour, correct?

20 | A | Correct.

21 | Q | And to do that you're going to have to
22 | put material and backfill material in to recreate those
23 | contours, aren't you?

24 | A | Yes.

25 | Q | And that is part of the reclamation

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1 process?

2 A Yes, it is.

3 Q Okay. And that has to occur and be
4 stabilized before you can begin the vegetation process?

5 A Yes.

6 Q Okay. And so, therefore, it would not--
7 I guess what I want to ask, is you would not expect, at any
8 given time during active mining, to go to a surface mine
9 and see a whole lot of vegetation, would you?

10 A If, if--

11 Q On the active part.

12 A On the active parts, no.

13 Q No? And once the active is completed,
14 you're going to begin restoring the contour, correct?

15 A Correct.

16 Q And then you're going to vegetate it?

17 A Right.

18 Q Okay. And along this area, obviously we
19 see a road in all those photographs, that's going to be one
20 of the last areas that's restored, is it not?

21 A Correct.

22 Q Okay. Otherwise they wouldn't have
23 access to the other areas, would they?

24 A Right.

25 Q Okay. And during this part of the

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1 reclamation process where you have these areas of
2 backfill and the contours being recreated, because it is
3 bare land or nonvegetated land, that's why you have
4 diversions and sediment structures to control the flow of
5 water?

6 A Correct.

7 Q Okay. So even during the period of time
8 where there is bare land or backfill areas, steps are and
9 have to be taken to control how the water flows?

10 A Correct.

11 Q Okay. And was that done on this permit?

12 A Yes.

13 MS. MAINES: Okay. Sir, I think
14 that's all the questions I have. Thank you.

15
16
17 RE-CROSS EXAMINATION

18
19 BY MR. PILLERSDORF:

20 Q Just very briefly, Mr. Stapleton. I
21 asked you a little while ago about some testimony given by
22 Mr. Blackburn about whether or not Cambrian had prior
23 notice that the permit had expired. I think on pages a
24 hundred and a hundred and one of Mr. Blackburn's
25 deposition, let me read this to you and I will have a

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1 follow-up question. "Okay. And apparently, for whatever
2 reason, the state hadn't caught that the permit had expired
3 prior to the time?" Mr. Blackburn said "no, they hadn't
4 been given a FP statement. And what is a FP statement? A
5 preventative enforcement statement." What is an FP
6 statement, sir?

7 A It is a notice that, that you need to do
8 something.

9 Q Okay. The way the bureaucracy of the
10 Cabinet works, would you have been given a copy of that as
11 the inspector?

12 A Would I have been?

13 Q Provided a copy of that FP statement?

14 A No.

15 Q You would, you would not have been
16 notified?

17 A No.

18 Q So your testimony is that you're the
19 inspector on the job, according to Mr. Blackburn they're
20 sent a preventative enforcement statement and they don't
21 notify the inspector?

22 A Preventative enforcement statement is
23 something that the inspector does.

24 Q Okay. Do you know what Mr. Blackburn's
25 talking about when he said they had been given a FP

1 statement? He's talking about the, the mining without a
2 permit that you eventually cited them for?

3 A Yes. It's-- to my recollection,
4 recollection, the notice that they send when a permit is
5 about to expire is not called a preventative enforcement
6 statement.

7 Q Okay. What is the notice they get when
8 their permit is about to expire?

9 A I don't remember exactly what it's
10 called.

11 Q So is it your testimony they actually get
12 that before the permit expires?

13 A Yes. I think it's practice that they,
14 they get that.

15 Q Okay. Do you get a copy?

16 A I think so, but I can't remember for
17 sure. Sometimes I think we did and sometimes I think we
18 didn't.

19 Q Okay. You were just asked a number of
20 questions by Ms. Maines suggesting that perhaps they did
21 reclamation, but the flood waters concealed the fact that
22 reclamation was done. Was that just your testimony?

23 A No, it was not. I said it could have.
24 She asked if they had seeded and top soiled, could the rain
25 have washed evidence of that away. Yes, it could have I

1 said.

2 Q Do you know?

3 A Do I know if it did? No, I don't know.

4 They had it seed-- I know they had seeded one hollow fill
5 and they had to rework it and, and reseed it, yes.

6 Q What was the status of the reclamation
7 the last time you were up there, if you remember?

8 A What was the status?

9 Q Yes, sir.

10 A They were-- it was ongoing reclamation
11 work, but it was not final reclamation.

12 Q You were asked the question if you
13 attended any of these public meetings. Do you have any
14 knowledge of what was said at those public meetings?

15 A No, I don't. I was not there.

16 Q Do you recall anything in the media, what
17 was said about the way you did your job?

18 A No, I do not.

19 MR. PILLERSDORF: That's all.

20
21
22 RE-DIRECT EXAMINATION

23 BY MS. MAINES:

24 Q Mr. Stapleton, just very quickly. The
25 notices that are supposed to be sent to a mining company

1 reminding them that their expiration date or notifying them
2 of their expiration date, are those sent from the Division
3 of Permits or the Division of Enforcement? If you know.

4 A I really don't know.

5 Q Okay. The inspector does not send them?

6 A The inspector does not send those, no.

7 Q Do you have any knowledge, one way or the
8 other, of whether or not such letter on 0619 was actually
9 issued to Cambrian or whether Cambrian actually received
10 it?

11 A I do not know, no.

12 Q Okay. Have you ever seen such a letter
13 that you can recall?

14 A Not that I can recall.

15 Q Okay. Are you aware of any other permits
16 you have overseen or been responsible for where the permit
17 has also expired because it just failed to get renewed for
18 some reason?

19 A Yes.

20 Q Typically what happens when that occurs?
21 How are those handled?

22 A A notice of Non-Compliance is issued.

23 Q And as soon as they get the permit up and
24 running again or renewed, they're good to go?

25 A Yes.

1 Q Okay. So just what, exactly what
2 happened here? You left?

3 A I left. I really don't know.

4 Q Okay. So it's not unheard of for this to
5 have occurred?

6 A Right.

7 Q Okay.

8 A There have been other instances, is what
9 I'm trying to say.

10 Q Instances?

11 A That's what I was trying to say.

12 Q Okay. During the twenty-two years that
13 you were a mining inspector charged with enforcing the
14 mining laws of the state, did you take your job seriously?

15 A Yes, I did.

16 Q And did you try to enforce the laws upon
17 the permits that you inspected to the best of your ability?

18 A Yes, I did.

19 Q Okay. Did you make a practice or habit
20 of allowing mining companies to slide and get away with
21 things?

22 A No, I did not.

23 Q Do you feel that the inspections that you
24 conducted after the flooding of July 17, 2010, that you
25 employed your normal practices of trying to do your job to

1 the best of your ability as it's outlined in the mining
2 laws and regulations?

3 A Yes.

4 MS. MAINES: Okay. That's all the
5 questions I have.

6 MR. PILLERSDORF: We're done.

7 VIDEOGRAPHER: End of deposition,
8 twelve oh four p.m.

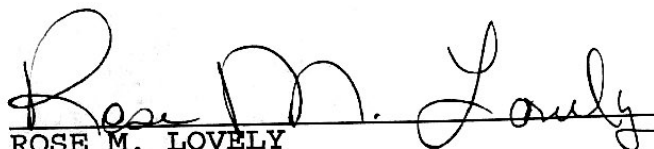
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12 WHEREUPON, the Deposition of Greg
13 Stapleton was concluded.
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1 COMMONWEALTH OF KENTUCKY)
2) SS
3 COUNTY OF FLOYD)
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5

6 I, ROSE M. LOVELY, a Notary Public within
7 and for the state at large, do hereby certify that the
8 foregoing deposition of Greg Stapleton was taken at the
9 time and place and for the purpose in the caption stated;
10 that the witness was first placed under oath; that the
11 deposition was reduced to shorthand writing and at the same
12 time electronically recorded; that the foregoing is a full,
13 true and correct transcript of the said deposition so
14 given; that there was no request that the witness read and
15 sign the deposition; that the appearances were as stated in
16 the caption.

17 I further certify that my commission as
18 Notary Public will expire October 12, 2013.

19 Given under my hand, this 5th day of
20 February, 2012.
21

22 
23 ROSE M. LOVELY
24 NOTARY PUBLIC
25

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102.